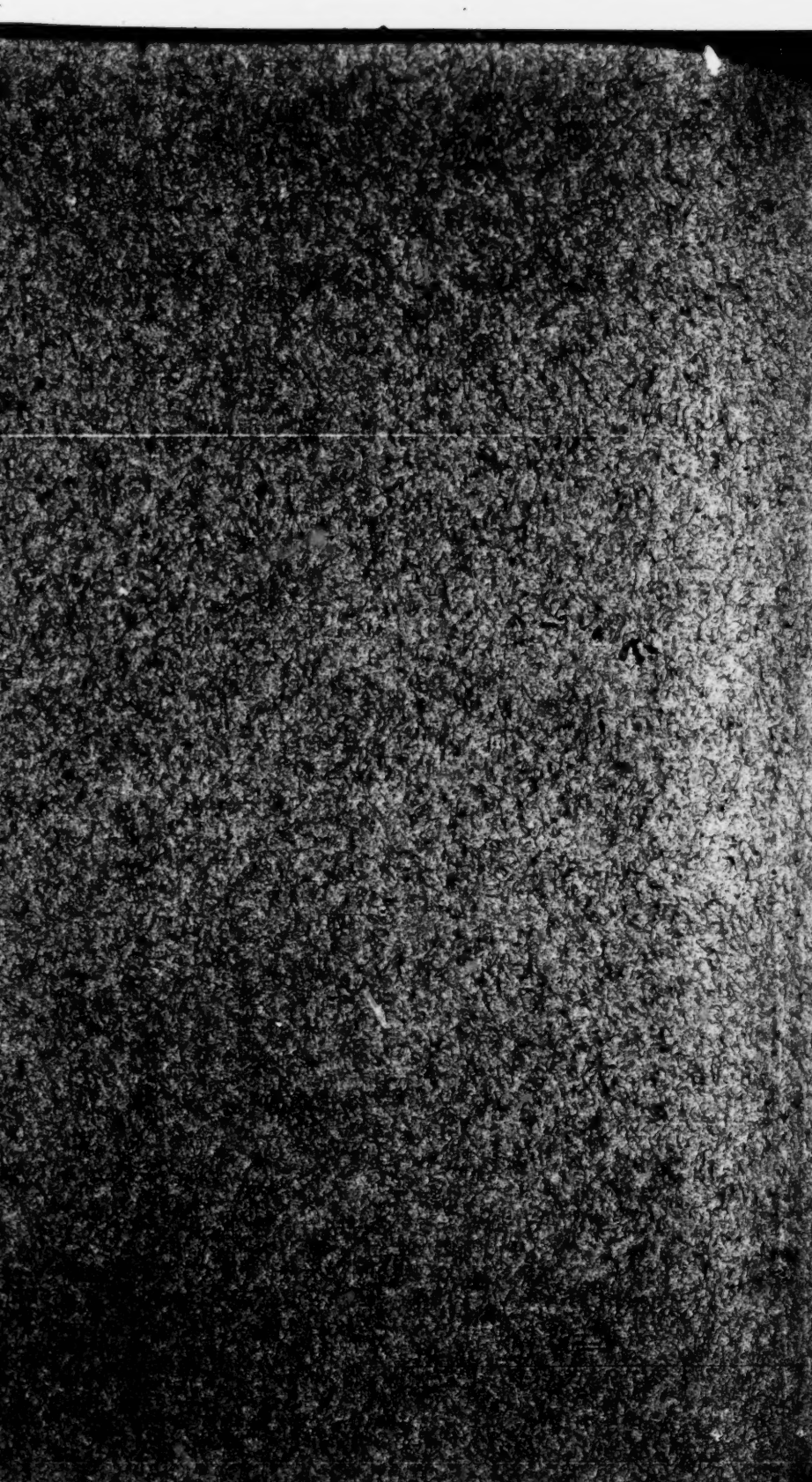

IN THE

Supreme Court of the United States

October Term, 1935

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE.

MOTION TO SUBSTITUTE PARTY APPELLANT

Comes now New Amsterdam Casualty Company, a corporation organized and existing under the laws of the State of New York and a citizen and resident of said State, by and through its duly authorized attorney, Edwin R. Morrison, a member of the Bar of this Court, and respectfully states to the Court that the appellant, Harry J. Kennaley, doing business as Harry Kennaley Commission Company, the plaintiff in case Docket No. 2356 in the United States District Court and one of the appellants herein, pursuant to the stipulation for consolidation entered into by the parties in said cause, has duly assigned unto said New Amsterdam Casualty Company all his right, title and interest in and to the certain moneys impounded with the Clerk of the District Court of the Western District of Missouri by said appellant, as shown by

the certificate of said Clerk executed as of the 23d day of March, 1936, and filed herein, to amount of the sum of $3,064.70; that such certificate shows that the date of the last deposit made by the said appellant with the Clerk of said court was the 8th day of February, 1935. This petitioner further states that it was the surety upon the bond of said Harry J. Kennaley filed with the Kansas City Livestock Exchange and the Secretary of Agriculture of the United States, one of the defendants herein; that said bond was conditioned upon the faithful and prompt remittance of proceeds of the sale of livestock as required by law to the owners of such livestock; that the said appellant had failed to enter upon his books and upon the statements submitted from time to time to said Kansas City Livestock Exchange all of his liabilities, and that his said books and financial statements failed to reveal correctly either to said E[illegible]ge or to the accountants for said Secretary of Agriculture called upon to examine his books all of the expenditures actually incurred by said appellant in the operation of his business; that by reason thereof he became in default of compliance with the conditions of said bond to the extent of an amount in excess of the sum of $15,000, and the said New Amsterdam Casualty Company, petitioner herein, as surety upon said bond, paid an amount in excess of said sum of $15,000 to those for whose benefit said bond was executed; that said New Amsterdam Casualty Company claims an interest in and to said impounded deposit by reason of the facts herein stated and the assignment by said appellant, Harry J. Kennaley, of all his right, title and interest therein; that an appeal is not moot as to said appellant, although he has discontinued business as a market agency, but exists by reason of the interest of this petitioner in and to the moneys aforesaid so impounded by said appellant with the Clerk of said District Court.

WHEREFORE, this petitioner prays that it be substi-

tuted as one of the appellants herein for and in the place and stead of Harry J. Kennaley, appellant herein, in respect of case Docket No. 2356, in equity, as filed in the District Court for the Western District of Missouri pending herein on appeal.

EDWIN R. MORRISON,
Counsel for New Amsterdam Casualty Company.

CHALLEN B. ELLIS,
Of Counsel.

The order of substitution as above prayed for is consented to on behalf of Harry J. Kennaley, one of the appellants herein.

Dated this 7th day of April, 1936.

JOHN B. GAGE,
FREDERICK H. WOOD,
Attorneys for Harry J. Kennaley, Appellant.

The order of substitution as above prayed for is consented to on behalf of the appellees.

Dated this 9th day of April, 1936.

STANLEY REED,
Solicitor General.

APPENDIX

CERTIFICATE OF CLERK OF DISTRICT COURT

UNITED STATES OF AMERICA, S.C.T.

I, A. L. ARNOLD, Clerk of the District Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the following tabulation contains a true and correct list of the names of the various petitioners in F. O. Morgan, doing business as F. O. Morgan Sheep Commission Company, et al., plaintiffs, v. United States of America and Secretary of Agriculture, defendants, in Equity No. 2328 and related cases Nos. 2329-2378, inclusive, who have discontinued making the deposits of money with the Clerk of this Court which were required under orders of this Court in these cases, together with the respective dates of last deposit by such respective petitioners and the total amount deposited with the Clerk of this Court by such respective petitioners:

Name of Petitioner.	Date of Last Deposit	Total deposits Made
Fred O. Morgan doing business as Fred O. Morgan Sheep Commission Co....	Jan. 29, 1935	$ 117.56
H. H. Kleeker, doing business as Hinie Kleeker Sheep Commission Co.....	Feb. 12, 1935	926.20
Henry F. Carnes doing business as The Henry F. Carnes Livestock Commission Company	Jan. 7, 1936	477.00
Drumm-Standish Commission Company, a Corporation	Mch. 9, 1936	2843.30
Link Faskin, doing business as Link Faskin Livestock Commission Co.....	No deposits made	
Harry J. Kennaley, doing business as The Kennaley Commission Company.....	Feb. 8, 1935	3064.70
Jay D. McCormick, doing business as Jay D. McCormick Livestock Com. Co.....	Jan. 28, 1936	889.84
Ben L. Welch, doing business as Welch Livestock Commission Co.....	Jan. 7, 1936	511.48
W. E. Curtis, doing business as W. E. Curtis & Co.....	May 15, 1934	828.80
Walter G. Land and John E. Maze, Partners, doing business as Walter G. Land Livestock Commission Co...	Jan. 2, 1935	756.78.
Less White, doing business as Less White Livestock Commission Co.....	Dec. 31, 1935	1917.71

WITNESS MY HAND as Clerk and the Seal of this Court. Done in my office at Kansas City, Missouri, this 23rd day of March, A. D. 1936.

A. L. ARNOLD,
Clerk of the United States District Court.

By H. C. SPAULDING,
Deputy Clerk.

(SEAL OF U. S. DISTRICT COURT)